

DENNIS A. BARLOW, CITY ATTORNEY
State Bar No. 63849
CAROL A. HUMISTON, SR. ASST. CITY ATTY
State Bar No. 115592
275 East Olive Avenue
P. O. Box 6459
Burbank, CA 91510
Tel: 818-238-5707 Fax: 818-238-5724

FILING FEE EXEMPT PURSUANT TO
GOVERNMENT CODE § 6103

Kristin A. Pelletier, (SBN 155378)
E-mail: kpelletier@bwslaw.com
Robert J. Tyson (SBN 187311)
E-mail: rtyson@bwslaw.com
BURKE, WILLIAMS & SORESENSEN, LLP
444 South Flower Street, Suite 2400
Los Angeles, CA 90071-2953
Tel: 213.236.0600 Fax: 213.236.2700

Attorneys for Defendant
City of Burbank

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES – CENTRAL DISTRICT

CHRISTOPHER LEE DUNN,

Plaintiff,

v.

BURBANK POLICE DEPARTMENT,
CITY OF BURBANK, and DOES 1
Through 100, Inclusive,

Defendants.

Case No. BC 417928

Assigned to the Honorable
Alan S. Rosenfield, Dept. 31

Complaint filed: July 16, 2009

DEFENDANT CITY OF BURBANK'S
NOTICE OF MOTION AND MOTION:
(1) TO COMPEL FURTHER RESPONSES TO
SPECIAL AND FORM
INTERROGATORIES AND
(2) FOR MONETARY SANCTIONS AGAINST
PLAINTIFF AND HIS COUNSEL;
MEMORANDUM OF POINTS AND
AUTHORITIES

(Separate Statement of Special Interrogatories
and Form Interrogatories and Responses in
Dispute, Declaration of Robert J. Tyson and
[Proposed] Order filed concurrently herewith)

DATE: June 10, 2010

TIME: 8:30 a.m.

DEPT.: 31

CITY ATTORNEY
2010 FEB 18 PM 2:19

2-11-10

1 TO PLAINTIFF AND TO HIS COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that on June 10, 2010 at 8:30 a.m., or as soon thereafter as
3 counsel may be heard, in Department 31 of the above-entitled Court, located at 111 N. Hill Street,
4 Los Angeles, CA, defendant City of Burbank ("City") will and hereby does move this Court for
5 an order compelling further responses from plaintiff to Defendant's Special Interrogatories (Set
6 One) Nos. 7, 8, 9, 10, 11, 12, 16, 17, 18, 37, 38, 39, 61, 62, 63, 67, 68, 69, 70, 73, 88, 89, 90, 103
7 and 109 and Form Interrogatories 210.3, 210.4, 215.1 and 215.2.

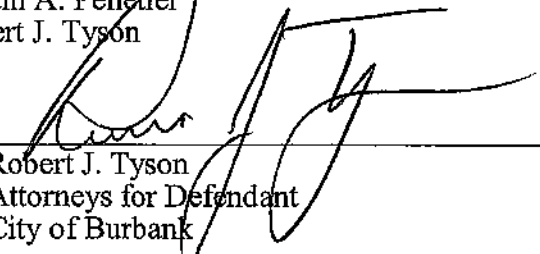
8 City also seeks monetary sanctions in the amount of \$7,670.00 against plaintiff
9 Christopher Lee Dunn and his counsel Solomon E. Gresen for the expenses which City was
10 forced to incur as a result of plaintiff's wrongful refusal to provide adequate responses to
11 discovery.

12 This Motion is made pursuant to *Code of Civil Procedure* Section 2030.300 on the
13 grounds that the subject interrogatory responses are evasive and incomplete boilerplate responses
14 to other questions, and that the objections to the interrogatories have been waived, are without
15 merit and are too general. This Motion is also based on plaintiff's misuse of the discovery
16 process in advancing baseless objections which had already been waived and providing deficient
17 responses and refusing to supply the supplemental responses.

18 This Motion is based upon this Notice of Motion, the attached Memorandum of Points
19 and Authorities and Declaration of Robert J. Tyson, and the Separate Statement of Defendant's
20 Special Interrogatories and Form Interrogatories and Plaintiff's Responses in Dispute filed
21 concurrently herewith, and upon such other and further evidence as may be presented at or before
22 the hearing on this Motion.

23 Dated: February 11, 2010

Burke, Williams & Sorensen, LLP
Kristin A. Pelletier
Robert J. Tyson

24
25
26 By: 
Robert J. Tyson
Attorneys for Defendant
City of Burbank

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION AND FACTUAL BACKGROUND**

3 Plaintiff Christopher Dunn ("Plaintiff" or "Dunn") was terminated from the Burbank
4 Police Department ("BPD") because it was determined that Dunn had tipped off one of his
5 informants about another police department's investigation of her. The BPD conducted an
6 extensive investigation and determined that Dunn had committed these acts and that this
7 "constitutes obstruction of justice, an act of moral turpitude."

8 On July 16, 2009, Dunn responded to his termination by filing a lawsuit for race
9 discrimination and wrongful termination, alleging that the City of Burbank ("City") terminated
10 him from his position as a Burbank police officer because of his race (he is allegedly half-
11 Japanese). Plaintiff's lawsuit against the City, alleges that Dunn was harassed, discriminated
12 against, and ultimately terminated because of his race. Dunn contends that his termination was
13 premised on false charges trumped up by City employees.

14 City has served discovery on plaintiff to determine the evidence he has in support of the
15 allegations he makes in his complaint. In response, Dunn has offered baseless objections and in
16 many cases merely repeated the statements made in the complaint without offering any details
17 that would be responsive to the requests. Despite a lengthy meet and confer process, described at
18 length below, Dunn still refuses to answer City's discovery.

19 **II. THE DISCOVERY IN ISSUE**

20 On September 16, 2009, City served on plaintiff, along with other written discovery
21 requests, its first set of special interrogatories as well as Form Interrogatories (Declaration of
22 Robert J. Tyson ("Tyson Decl."), ¶2, Ex. A and Ex. B) The interrogatories in issue are basic
23 "contention interrogatories" which seek specific information regarding plaintiff's contentions in
24 this lawsuit. They seek descriptions of the facts, witnesses, and contentions concerning core
25 matters as to which plaintiff bears the burden of proof at trial, such as plaintiff's contentions, that
26 he was harassed, discriminated against and ultimately terminated because of his race.

27 Plaintiff's counsel requested and was granted one extension to respond to City's
28 discovery. That extension ran through November 5, 2009. Tyson Decl. ¶3, Ex. C. However,

1 Plaintiff did not timely respond to City's discovery. Tyson Decl. ¶4, Ex. D. Plaintiff eventually
2 responded to city's discovery on November 23, 2009. Tyson Decl. ¶¶5,6, Ex. E, F. However,
3 plaintiff asserted lapsed and meritless objections and in many cases simply restated his bare
4 contentions straight out of the complaint. *Id.*

5 On or about November 30, 2009, City's counsel sent a meet and confer letter to plaintiff's
6 counsel regarding the deficient discovery responses. (Tyson Decl.¶7, Ex. G) City's counsel
7 followed up via e-mail on or about December 23, 2009. (Tyson Decl.¶8, Ex. H)

8 In response, plaintiff's counsel e-mailed City's counsel and promised to provide
9 supplemental responses. Plaintiff's counsel also agreed to extend the time for any motion to
10 compel, in the event supplemental responses were not served, to February 15, 2010. (Tyson
11 Decl.10, Ex. H)

12 Such responses were not forthcoming. On February 1, 2010, plaintiff's counsel informed
13 City's counsel that plaintiff would be standing by his previous responses. (Tyson Decl., ¶11 Ex.
14 I). Plaintiff has also filed a motion to be relieved of his objection waiver.

15 City has been forced to bring this motion to acquire information that plaintiff refused to
16 provide in the normal course of discovery, and subsequently promised to provide. City will also
17 be forced to file an opposition to plaintiff's motion to be relieved of his objection waiver. There
18 is no justification for forcing City to have incurred the necessary expenses in bringing these
19 motions.

20 21 **III. ARGUMENT**

22 **A. The Applicable Law**

23 In his twenty-one page, seventy paragraph complaint, plaintiff alleges five causes of
24 action 1) Discrimination, 2) Harassment, 3) Retaliation, 4) Failure to Take Reasonable Steps to
25 Prevent Harassment, Discrimination and Retaliation, and 5) Violation of Public Safety Officers
26 Procedural Bill of Rights¹. Accordingly, City is required to conduct Discovery into the facts,

27
28 ¹ The last cause of action is incorrectly entitled plaintiff's "Sixth Cause of Action."

witnesses and documents supporting each separate allegation in each cause of action.

B. City Is Entitled to Supplemental Special Interrogatory Responses.

California's discovery procedures "are designed to minimize the opportunities for fabrication and forgetfulness, and to eliminate the need for guesswork about the other side's evidence, with all doubts about discoverability resolved in favor of disclosure." *Glenfed Dev. Corp. v. Superior Court* (1997) 53 Cal. App. 4th 1113, 1119. See also, *Greyhound Corp. v. Superior Court* (1961) 56 Cal. 2d 355, 376 (California discovery procedures intended to take the "game" element out of trial preparation).

In keeping with this liberal tradition, each answer to an interrogatory must be "as complete and straightforward as the information reasonably available to the responding party permits. . . . If any interrogatory cannot be answered completely, it shall be answered to the extent possible." C.C.P. § 2030.220 (a) and (b). A response which supplies only a portion of the requested information, gives conclusory answers, or otherwise evades answering a specific question is wholly insufficient. *Deyo v. Kilbourne* (1978) 84 Cal. App. 3d 771, 783-84. When a party fails to abide by Section 2030.220, Section 2030.300 provides the appropriate remedy: the propounding party "may move for an order compelling a further response[.]"

Furthermore, the burden is on the responding party—plaintiffs here—to justify his objections. *Fairmont Ins. Co. v. Sup. Ct.* (2000) 22 Cal.4th 245, 255" A party that fails to serve a timely response to the discovery request waives 'any objection to the request, ' including 'one based on privilege' or the protection of attorney work product." *Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 403-404(citing C.C.P. §§ 2030.290, subd. (a); 2031.300, subd. (a)).

Here, plaintiff waived his objections by failing to serve timely responses. (Tyson Decl. ¶ 4).

As more specifically elaborated on in City's separate statement of Special Interrogatories and Form Interrogatories and Responses in Dispute, Plaintiff does not answer the specific questions posed in his responses to special interrogatory nos. 7-12, 16-18, 37-39, but instead

1 repeats his boilerplate response to other questions. This is "wholly insufficient." *Deyo v.*
2 *Kilbourne* (1978) 84 Cal. App. 3d 771, 783-84.

3 Also, Plaintiff does not answer special interrogatory nos. 61, 62, 63, 67, 68, 69, 70, 73,
4 109, at all, but merely repeats the contentions in his complaint. This is also "wholly
5 insufficient." *Deyo v. Kilbourne* (1978) 84 Cal. App. 3d 771, 783-84.

6 Plaintiff's responses to special interrogatory nos. 88-90 consist solely of an objection that
7 the interrogatories are duplicative of interrogatories 85-87. This is wrong for two reasons. First,
8 as explained above plaintiff waived his objections, by not answering these interrogatories in a
9 timely manner. *Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007)
10 148 Cal.App.4th 390, 403-404(citing C.C.P. §§ 2030.290, subd. (a); 2031.300, subd. (a).)
11 Secondly, this objection is without basis as these sets of interrogatories inquire into different
12 subject matters (discrimination versus harassment) and thus are not duplicative as plaintiff
13 contends.

14 Plaintiff's response to special interrogatory no. 103 does not answer the question asked,
15 which is what rights plaintiff exercised under the Public Safety Officers' Procedural Bill of
16 Rights Act. Instead, plaintiff recites baseless objections and offers a list of allegedly
17 discriminatory acts which do not answer the interrogatory at all. This completely evasive answer
18 is not sufficient. *See Deyo v. Kilbourne* (1978) 84 Cal. App. 3d 771, 783-84.

19 Plaintiff has failed to respond to form interrogatory Nos. 210.3 and 210.4 regarding
20 plaintiff's efforts to seek subsequent employment as well as plaintiff's lost future income
21 calculations. *See Deyo v. Kilbourne* (1978) 84 Cal. App. 3d 771, 783-84.

22 Plaintiff's response to form interrogatory Nos. 215.1 and 215.2 state that plaintiff has
23 conducted no non-privileged interviews. First, plaintiff has waived any privileges by failing to
24 timely respond to City's discovery. *Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare*
25 *Consultants* (2007) 148 Cal.App.4th 390, 403-404(citing C.C.P. §§ 2030.290, subd. (a);
26 2031.300, subd. (a).). Second, plaintiff has not produced a privilege log relating to such
27 interviews. Plaintiff should provide an unqualified response to these interrogatories.

28 ///The burden is on the responding party—plaintiffs here—to justify their objections. *Fairmont*

1 *Ins. Co. v. Sup. Ct.* (2000) 22 Cal.4th 245, 255

2 Thus, legitimate and specific inquiries have been met with evasion and stonewalling. That
3 should not be permitted.

4 Plaintiff's objections on the grounds of lack of foundation have no application to any of
5 the interrogatories. Some of these objections make no sense at all, and none of them should
6 reasonably justify a complete failure to respond to City's discovery requests. See C.C.P. §
7 2030.300(a)(3) (stating that a party may bring a motion to compel if an objection "is without
8 merit or too general."); see, e.g., *Standon Co. v. Superior Court* (1990) 225 Cal. App. 3d 898, 901
9 (noting that the responding party's numerous objections based on vagueness and ambiguity, for
10 example, were merely "'nuisance' objection[s]" that could not be relied upon to refuse to respond
11 to the propounding party's discovery requests).

12 13 **IV. SANCTIONS**

14 The Code of Civil Procedure requires that sanctions be imposed under the circumstances
15 presented here. Plaintiff misused the discovery process in several ways, including failing to
16 comply with his own promise to provide supplemental responses, objecting to proper
17 interrogatories, and, presumably, opposing this motion without substantial justification.

18 Section 2023.030 of the Code of Civil Procedure authorizes the court to impose a
19 monetary sanction for "misuse of the discovery process." Section 2023.010 offers nine specific
20 examples of "misuse," and plaintiff engaged in at least the following four:

- 21 (d) Failing to respond or to submit to an authorized method of discovery.
- 22 (e) Making, without substantial justification, an unmeritorious objection to discovery
- 23 (f) Making an evasive response to discovery.
- 24 (h) Making or opposing, unsuccessfully and without substantial justification, a motion
25 to compel or to limit discovery.

26 Finally, the Code of Civil Procedure section specifically addressing interrogatories also
27 states that "[t]he court shall impose a monetary sanction under Chapter 7 (commencing with
28 Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a

1 motion to compel a further response to interrogatories, unless it finds that the one subject to the
2 sanction acted with substantial justification or that other circumstances make the imposition of the
3 sanction unjust." C.C.P. § 2030.300(d).

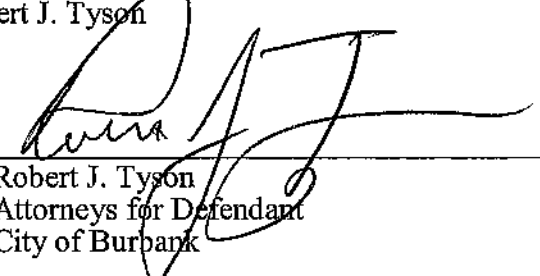
4 In short, numerous sections of the Code of Civil Procedure demand that monetary
5 sanctions be imposed against plaintiff and his counsel. Plaintiff has left City no choice but to
6 incur the expense and burden the Court with this unfortunately necessary motion. As a result, the
7 Court should impose \$7,670.00 in sanctions against plaintiff for the amount in attorney's fees and
8 costs City was required to expend after it received plaintiff's original responses in attempting to
9 obtain the discovery to which it is rightfully entitled. (Tyson Decl., ¶ 14).

10
11 **V. CONCLUSION**

12 Plaintiff filed suit against City. He is obligated to fully and completely respond to the
13 discovery that City served seeking the details and bases of his claims and contentions. He did not
14 come even close to doing so. Instead, he has forced City to incur the expense of preparing and
15 filing this motion (along with an opposition to his motion for a protective order) in order to obtain
16 the information it is entitled to. Accordingly, this motion should be granted. Plaintiff should be
17 ordered to provide supplemental answers to each of the subject interrogatories within ten calendar
18 days, and he and his counsel should be sanctioned in the amount of \$7,670.00, to be paid within
19 thirty calendar days of the Court's Order.

20
21 Dated: February 11, 2010

Burke, Williams & Sorensen, LLP
Kristin A. Pelletier
Robert J. Tyson

22
23
24 By: 
25 Robert J. Tyson
26 Attorneys for Defendant
27 City of Burbank
28

PROOF OF SERVICE

I, Sandy Arangio, declare:

I am a citizen of the United States and employed in Los Angeles County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 444 South Flower Street, Suite 2400, Los Angeles, California 90071-2953. On February 29, 2010, I served a copy of the within document(s):

DEFENDANT CITY OF BURBANK'S NOTICE OF MOTION AND MOTION:
(1) TO COMPEL FURTHER RESPONSES TO SPECIAL INTERROGATORIES AND (2)
FOR MONETARY SANCTIONS AGAINST PLAINTIFF AND HIS COUNSEL;
MEMORANDUM OF POINTS AND AUTHORITIES

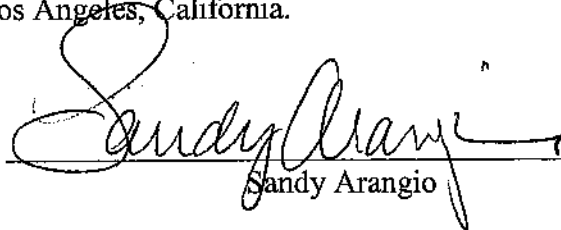
X by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below.

Solomon E. Gresen, Esq.
Law Offices of Rheuban & Gresen
15910 Ventura Blvd., Suite 1610
Encino, CA 91436

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on February 11, 2010, at Los Angeles, California.


Sandy Arangio